vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7608 OF 2000

The Dairy Development
Commissioner & Ors. ... Petitioners

V/s.

Shri Thorave Jaysingh Vishnu & Ors. ... Respondents

Mr.S.K. Chinchalikar, AGP, for Petitioners
Mr.P.C. Kansara for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 3, 2007**

P.C.:

. Rule. Rule returnable forthwith. Mr.Kansara waives service on behalf of the Respondent Nos.2 and 4.

2. This Petition challenges the order dated 18.1.1999 passed in Complaint (ULP) Nos.257 to 260 of 1995. Complaint (ULP) No.258 of 1995 has been filed by Respondent No.2 and Complaint (ULP) No.260 of 1995 has been filed by Respondent No.4. This Petition against Respondent Nos.1 and 3 has been dismissed on 15.6.2007 as the heirs of the Petitioners were not brought on record.

3. These complaints were dismissed by the Industrial Court on 7.5.1997. An application for review

was filed on 31.3.1998 being Miscellaneous Application (ULP) No.43 of 1997, although such an application itself was not maintainable. That review was allowed and the complaints were restored to file by order dated 31.3.1998.

4. By the order impugned in this petition, the Industrial Court has observed that the respondents i.e., the petitioners herein have not filed written statements in all the complaints. The matters were therefore adjourned from time to time in order to permit the respondent to file the written statement. On this basis, the Industrial Court accepted the case of the complainants and the affidavit of evidence filed by the complainants and allowed the complaints declaring that the petitioners herein have indulged in unfair labour practices under Items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act.

5. The observation of the Industrial Court that "however, the respondents have not filed the written statements in all these four complaints" is wholly incorrect. The written statements were already on record when the initial order dismissing the complaints was passed. The Industrial Court, therefore, could not have ignored these written statements and allowed the

complaints by observing that the contents of the affidavits filed by the complainant have gone unchallenged.

6. Mr.Kansara appearing for Respondent Nos.2 and 4 submits that challenge to the order of 18.1.1999 has been made only on 9.8.2000 and, therefore, ought not to be entertained. He submits that there is no explanation for the delay in filing the writ petition.

7. In my view, delay by itself would not be sufficient to dismiss the present writ petition since there is miscarriage of justice in this case on the part of the Industrial Court. The error of law is apparent in this case and, therefore, the impugned order is required to be set aside.

8. Hence the impugned order is set aside in Complaint (ULP) Nos.258 of 1995 and 260 of 1995. Rule made absolute accordingly.

9. Parties to appear before the Industrial Court on July 23, 2007.